

Wednesday, November 7, 2007

House Meets At...	Votes Predicted At...
10:00 a.m. For Legislative Business	Last Vote: 9:00-10:00 p.m.
Fifteen "One-minutes" Per Side	

Any anticipated Member absences for votes this week should be reported to the Office of the Majority Whip at 226-3210.

Floor Schedule and Procedure

- Today, the House will convene at 10:00 a.m. and recess immediately. The House will then reconvene at approximately 10:45 a.m. in a Joint Meeting with the Senate to receive His Excellency, Nicolas Sarkozy, President of the French Republic.
- **H. Res. 793-Rule providing for consideration of H.R. 3685-Employment Non-Discrimination Act of 2007 (Rep. Castor-Rules):**
The structured rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor. The rule makes in order only those amendments printed in the Rules Committee report. The rule provides one motion to recommit with or without instructions. Debate on the rule will be managed by Rep. Castor, and consideration will proceed as follows:
 - One hour of debate on the rule.
 - Possible vote on a Democratic motion to move the previous question. **Democrats are urged to vote yes on the motion.**
 - Vote on adoption of the rule. **Democrats are urged to vote yes on adoption of the rule.**
- **H.R. 3685-Employment Non-Discrimination Act of 2007(Rep. Frank-Education and Labor):** Pursuant to the rule, debate on the bill will be managed by Education and Labor Committee Chair Rep. George Miller, or his designee, and will proceed as follows:
 - One hour of debate on the bill.
 - Debate and votes on amendments to the bill.
 - Possible debate and vote on a Republican motion to recommit the bill.
 - Vote on final passage of the bill. **Democrats are urged to vote yes on final passage.**

- **H Res. 801–Rule providing for consideration of H.R. 3688 – United States-Peru Trade Promotion Agreement Implementation Act (Rep. Matsui-Rules):** The closed rule provides three hours of debate, with 45 minutes in favor of the bill controlled by Representative Rangel of New York or his designee, 45 minutes in favor of the bill controlled by Representative McCrery of Louisiana or his designee, 45 minutes in opposition to the bill controlled by Representative Michaud of Maine or his designee, and 45 minutes in opposition to the bill controlled by the Minority Leader or his designee. The rule provides that pursuant to section 151(f)(2) of the Trade Act of 1974, the previous question shall be considered as ordered on the bill to final passage without intervening motion. Debate on the rule will be managed by Rep. Matsui, and consideration will proceed as follows:
 - One hour of debate on the rule.
 - Possible vote on a Democratic motion to move the previous question. **Democrats are urged to vote yes on the motion.**
 - Vote on adoption of the rule. **Democrats are urged to vote yes on adoption of the rule.**
- **H.R. 3688 – United States-Peru Trade Promotion Agreement Implementation Act (Rep. Hoyer-Ways and Means):** Pursuant to the rule, debate on the bill will be managed by Ways and Means Committee Chair Rep. Charles Rangel, or his designee, Rep. Michaud, or his designee, Rep. McCrery, or his designee, Rep. Boehner, or his designee, each for forty five minutes, and will proceed as follows:
 - Three hours of debate on the bill.
 - Vote on final passage of the bill.

Postponed Suspension Vote: At some point today, the House will take a recorded vote on the following bill, which was debated on Tuesday:

1. **H.Con.Res. 236** - Recognizing the close relationship between the United States and the Republic of San Marino (*Rep. Dreier – Foreign Affairs*)

Bill Summary and Key Issues

H.R. 3685-The Employment Non-discrimination Act (“ENDA”)

Makes it illegal to fire, refuse to hire, or otherwise discriminate against employees simply based on their actual or perceived sexual orientation. ENDA will extend basic civil rights protections to millions of gay, lesbian, and bisexual (GLB) Americans.

WHY ENDA IS NEEDED. It is fundamental to equal opportunity that employment decisions should be based on a person’s qualifications and job performance, not who they are. While many employers agree – 90% of Fortune 500 companies now include sexual orientation in their nondiscrimination policies – anti-gay discrimination persists. Currently, it is legal in 30 states to fire someone simply because of his or her sexual orientation. A 2007 study found that 16 percent of lesbians and gay men reported being fired or denied a job because of sexual orientation. A 2005 survey found that a quarter of GLB people disagreed with a statement that

most employers in their areas would hire openly GLB people even if they are qualified for the job.

WHERE ENDA APPLIES. Like other civil rights laws, ENDA applies to private sector employers with 15 or more employees, employment agencies, labor organizations, and joint labor-management committees. ENDA also applies to Congress and the federal government, as well as state and local governments.

WHERE ENDA DOES NOT APPLY. ENDA does not apply to members of the armed forces. ENDA also excludes private membership clubs and religious organizations, such as religious corporations, associations, and schools. ENDA uses Title VII's definition of a religious organization, such that if an organization is exempt from Title VII's religious discrimination prohibitions, it will be exempt from ENDA's prohibitions.

HOW ENDA WORKS. ENDA authorizes the same enforcement powers, procedures and remedies that exist under current federal employment discrimination laws such as Title VII and the Americans with Disabilities Act. All individual relief that is available under Title VII is available under ENDA. However, unlike Title VII protections, ENDA does not allow an individual to bring a "disparate impact" claim -- that is, a claim that a facially neutral practice of the employer has a disproportionate adverse effect on persons of a particular sexual orientation. In addition, ENDA does not allow for affirmative action or quotas based on sexual orientation.

Anticipated Amendments to H.R. 3685

Miller, George (CA): The amendment 1) provides explicitly that any religious corporation, school, association or society that is exempt under either Section 702(a) or 703(e)(2) of Title VII's religious exemptions is exempt under ENDA. It clarifies that the scope of Title VII's exemption is exactly the scope of ENDA's exemption (if a school is exempt from Title VII's religious discrimination prohibitions, it will also be exempt from ENDA); and 2) it clarifies that ENDA does not alter the Defense of Marriage Act (DOMA) in any way. It strikes language referencing "a same-sex couple who are not married" in the Employee Benefits section of ENDA. It also inserts language clarifying that the term "married" has the meaning given such term in DOMA, directly incorporating DOMA's definition of marriage. (20 minutes)

Souder (IN): The amendment would strike paragraph (3) of section 8(a), which prohibits employers from conditioning employment on a person being married or being eligible to be married. (10 minutes)

Baldwin (WI): The amendment would expand ENDA's protections to persons discriminated against based on gender identity, defined as the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth. The amendment includes language concerning shared facilities, dress, and grooming standards, as well as a

paragraph stating that the construction of additional facilities are not required. (10 minutes)

H.R. 3688 – United States-Peru Trade Promotion Agreement Implementation Act

The Peru FTA —First Steps in a New Trade Policy for America

Democrats have succeeded in achieving important first steps in a fundamental shift in U.S. trade policy in the Peru FTA. The Peru FTA has been amended to incorporate key Democratic priorities – priorities that will expand and shape trade in ways that spread the benefits of globalization here and abroad by raising standards. Key provisions include:

Core Labor Standards

- A fully enforceable commitment that FTA countries will adopt, maintain and enforce in their laws and practice the five basic international labor standards, as stated in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work.
- A new, fully enforceable, binding commitment prohibiting FTA countries from lowering labor standards.
- New limitations on “prosecutorial” and “enforcement” discretion – FTA countries cannot defend the failure to enforce laws related to the five basic standards due to resource limitations or decisions to prioritize other enforcement issues.
- Same dispute settlement mechanisms/penalties as other FTA obligations.
- Clear actions by the Government of Peru to implement in Peru’s labor laws the five basic ILO standards.

Environment

- A fully enforceable commitment that FTA countries adopt, implement and enforce in their laws and practice obligations under seven common major multilateral environmental agreements (MEAs), including CITES and the Montreal Protocol.² Provision to add additional, new common MEAs.
- A new, fully enforceable, binding commitment prohibiting FTA countries from lowering environmental standards.
- Same dispute settlement mechanisms/penalties as other FTA obligations.
- A groundbreaking “conflict of laws” provision – where a covered MEA obligation affects an obligation under an FTA, the FTA cannot be used to undermine the MEA obligation.
- For Peru, a groundbreaking, fully enforceable Annex requiring Peru to take major specific steps to crack down on all illegal logging, and additional action to stop illegal logging of mahogany. Unprecedented provision allowing the United States to investigate illegal logging of mahogany in-country, and stop questionable shipments at the border.

Generic Medicines

- Change the “data exclusivity” provision (period in which a generic manufacturer may not use clinical test data of an innovative drug manufacturer) to allow generics to enter the market more quickly than under the old provision (by having “concurrent period” of data exclusivity).
- Include exception in FTAs that the “data exclusivity” provision does not preclude FTA countries from taking measures to protect public health and from utilizing the WTO “health solution.”

- Eliminate requirement that a drug regulatory agency withhold approval of a generic until it can certify that no patent would be violated if the generic were marketed; strengthen and expedite judicial processes in countries to ensure patent rights of innovative drug companies are respected.
- Eliminate requirement that an FTA country extend the term of a patent on a pharmaceutical product for delays in the patent and regulatory approval process. Instead, ensure expeditious patent and regulatory approval process.

Government Procurement

- Groundbreaking provision that allows U.S. Federal and State governments to condition government contracts on contractors adhering to the five basic labor standards and acceptable conditions of work and wages. (Existing provision allows conditioning of contracts on use of recycled materials.)

Port Security

- Clarify that the U.S. has full, non-challengeable authority to prevent foreign companies from operating U.S. ports, based on national security concerns.

Investment

- Explicitly state that foreign investors in the United States will not be accorded greater substantive rights with respect to investment protections than U.S. investors in the United States.

Quote of the Day

“The person who makes a success of living is the one who sees his goal steadily and aims for it unswervingly. That is dedication” – Cecil B. De Mille

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